

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
DAVID J. TEAT	)	File No. D034102
	)	
Request for Extension of Construction Deadline	)	
220 MHz Non-Nationwide License	)	
WPFM981, Knoxville, Tennessee	)	

**ORDER**

**Adopted: January 12, 2000**

**Released: January 12, 2000**

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. Before us is a request filed by David J. Teat (Teat) for extension of the construction deadline for his non-nationwide Phase I 220 MHz license, call sign WPFM981, in Knoxville, Tennessee.<sup>1</sup> We find that Teat has failed to demonstrate that extension of the construction deadline for WPFM981 is warranted. Accordingly, we will deny his request and cancel his license for failure to construct.

2. When the Commission initially authorized non-nationwide Phase I 220 MHz licenses, the licensee was required to have constructed, and placed into operation, its base station within eight months of receiving its license.<sup>2</sup> The Wireless Telecommunications Bureau (Bureau), however, extended the construction deadline for non-nationwide 220 MHz licenses on several occasions for a variety of reasons.<sup>3</sup> Eventually, those non-nationwide 220 MHz licensees who elected to modify their authorizations pursuant to the *220 MHz Second Report and Order*, were required to have constructed by August 15,

<sup>1</sup> Letter of David J. Teat to Kathryn M. Garland, Chief, Consumer Assistance Branch, Customer Service Division, FCC, dated October 17, 1996 (*Teat Request*).

<sup>2</sup> See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-252, *Report and Order*, 6 FCC Rcd. 2356, 2366, ¶ 76 (1991).

<sup>3</sup> See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Order*, 9 FCC Rcd. 1739 (1994) (Bureau extended the construction deadline to December 2, 1994); Private Radio Bureau Extends Time to Construct Non-Nationwide 220 MHz Stations Through April 4, 1995 and Lifts Freeze for Applications to Modify Site Locations, *Public Notice*, 10 FCC Rcd. 744 (1994) (Bureau extended the construction deadline to April 4, 1995); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Order*, 10 FCC Rcd. 3356 (1995) (Bureau extended the deadline to December 31, 1995); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Order*, 11 FCC Rcd. 9710 (1995) (Bureau further extended the construction deadline contingent upon the closure of the Commission as a result of any furlough of Federal Government employees. The ensuing 23-day Federal furlough resulted in an extension of the construction deadline to February 2, 1996, pursuant to a formula established in the Bureau Order).

1996.<sup>4</sup> This deadline was also extended automatically by the number of days after June 1, 1996, that passed before a licensee's timely filed modification application was actually granted.<sup>5</sup>

3. On August 22, 1994, Teat was granted a license to operate a 220 MHz non-nationwide system under call sign WPFM981 in Knoxville, Tennessee. The original construction deadline for Teat's license was April 22, 1995, but as mentioned above, this deadline was extended for all 220 MHz non-nationwide licenses on a number of occasions. Pursuant to the *220 MHz Second Report and Order*, Teat requested and was granted a modification of his license which extended the final construction deadline for his system to October 8, 1996. At no time prior to this date did Teat request a further extension. On October 8, 1996, the Commission sent Teat a computer generated letter stating that the construction deadline for WPFM981 had lapsed and requesting that Teat supply an update on the status of construction within thirty days.

4. In his response filed October 17, 1996, Teat maintains that he has had difficulty constructing his system.<sup>6</sup> Specifically, Teat states that he had difficulties with the management company he hired to build out his system as well as difficulty locating equipment and financing.<sup>7</sup> Teat admits that he should have "become more active earlier" and states that "[t]he pieces didn't fall together until about five days before [the] construction deadline of October 8, 1996," when, among other things, he negotiated a lease and ordered and paid for equipment. Teat requests that his "efforts to date be construed as sufficient to maintain [his] license."<sup>8</sup>

5. We find that no special circumstances exist to warrant an extension of the construction deadline for WPFM981. By his own admission, Teat did not actively pursue the construction of his system and did not begin to make any serious progress until immediately prior to the construction deadline. Because the construction deadline was extended on several occasions, Teat eventually had more than two years from the grant date to construct his system. He fails to demonstrate why he should be granted more time to construct than other 220 MHz non-nationwide licensees were given. We do not find merit in Teat's contention that he relied upon a third party management company that allegedly delayed construction. Under the doctrine of respondeat superior, the licensee as a principal is responsible for the acts of the management company, its agent.<sup>9</sup> Therefore, Teat may not rely on his agent's alleged

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<sup>4</sup> See Amendment of Part 90 of the Commission's Rules to Provide Service for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Second Report and Order*, 12 FCC Rcd. 3668, 3674, ¶ 21 (1996) (*220 MHz Second Report and Order*).

<sup>5</sup> *220 MHz Second Report and Order* at 3674, ¶ 23.

<sup>6</sup> *Teat Request* at 1-2.

<sup>7</sup> *Id.*

<sup>8</sup> As of August 22, 1998, Teat had not constructed the base station (telephone conversation with Scott A. Mackoul, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau).

<sup>9</sup> See American Paging, Inc. (of Virginia), *Memorandum Opinion and Order*, 12 FCC Rcd. 10,417, 10,419, ¶ 11 (1997); Walton Broadcasting, Inc. (KIKX), *Decision*, 78 FCC 2d 85 (1980). See also 47 U.S.C. § 217 (the acts, omissions or failures of any agent or other person acting for or employed by a common carrier are deemed to be the

mismanagement to support extension of the construction deadline. In addition, we note that Teat made no attempt to request an extension prior to the final construction deadline. Therefore, we deny Teat's request for extension and we cancel his license for failure to construct.

6. Accordingly, pursuant to our authority under sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and sections 0.331 and 90.725(f) of the Commission's rules, 47 C.F.R. §§ 0.331, 90.725(f), IT IS ORDERED that the request for extension of the construction deadline for license WPFM981 IS DENIED and license WPFM981 IS HEREBY CANCELLED.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze  
Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

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acts, omissions or failures of the carrier).